

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|-------------------------------------|---|----------------------------------|
| WASHINGTON MUTUAL BANK, |) | Case No. 1:07 CV 683 |
| |) | |
| Plaintiff, |) | Judge Peter C. Economus |
| |) | |
| vs. |) | REPORT AND RECOMMENDATION |
| |) | OF MAGISTRATE JUDGE |
| |) | (Regarding ECF #148) |
| PATRICIA CHIAPPETTA, et al., |) | |
| |) | |
| Defendants. |) | Magistrate Judge James S. Gallas |
| |) | |

Washington Mutual Bank commenced this foreclosure action against John and Patricia Chiappetta on March 8, 2007, joined other creditors, and additional creditors have sought to intervene. On December 2, 2009, JP MorganChase Bank NA was granted leave to substitute itself as the successor to Washington Mutual Bank.

The docket entries indicate return of service was executed on Patricia A. Chiappetta, John D. Chiappetta, Infinity Construction Co., Inc., Ohio Director of Transportation, and the United States of America Department of Justice. Answers to the original complaint were filed by Patricia Chiappetta, Infinity Construction Co., Inc., the Ohio Director of Transportation, and the United States Department of Justice. On July 5, 2007, Washington Mutual filed a report of planning meeting indicating the consent of the parties to assignment of this matter to a magistrate judge, and the following day upon this consent, this case was transferred to the undersigned pursuant to 28 U.S.C. §636(c). (See ECF # 22, 23). On September 19, 2008, partial judgment was entered granting Washington Mutual's motion for partial summary judgment and

denying Infinity Construction Co.'s motion for summary judgment (ECF # 62). On May 21, 2009, the undersigned denied a subsequent motion for partial summary judgment filed by Washington Mutual (ECF # 70, 93), granted intervenor American First Federal, Inc.'s motion to strike, and made several rulings regarding notice (ECF # 79, 89, 93). The case proceeded with court supervision of discovery and now several motions are pending as well as defendant John Chiappetta's objection to the undersigned's jurisdiction. (ECF #148).

Incomplete Consent of the Parties:

Intervenor, American First Federal on March 19, 2010, filed an application for default against John Chiappetta and Patricia Chiappetta. (See ECF # 120). No default was entered in accord with Rule 55. Instead, these defendants move for extension of time to respond to the application for entry of default and this extension was granted (ECF #121). Now John Chiappetta has appeared in this matter opposing the application for default with his motion to dismiss and /or motion for relief from judgment and/or motion to strike (ECF #123). Due to the lack of consent, the undersigned cannot enter judgment against John Chiappetta. See *Callier v. Gray*, 167 F.3d 977 (6th Cir. 1999); *Conetta v. National Hair Care Centers*, 236 F.3d 67, 72(1st Cir. 2001); compare *Roell v Withrow*, 538 U.S. 580, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003) (implied consent from appearance and conduct before Magistrate Judge).

Accordingly, the undersigned recommends that this matter be returned to the jurisdiction of an Article III appointed Federal District Court Judge due to John Chiappetta's objection to the reference to the jurisdiction of a Magistrate Judge. Of course, this does not mean that this case

cannot be referred for report and recommended rulings under 28 U.S.C. §636(b)(1).

s/James S. Gallas
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of mailing of this notice. Failure to file objections within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

